

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 728

Introduced by Senator ~~Hernandez~~ *Negrete McLeod*

February 18, 2011

An act to ~~add~~ amend Section ~~100522 to 14105.48~~ of the Government Welfare and Institutions Code, relating to ~~health care coverage~~ *Medi-Cal*.

LEGISLATIVE COUNSEL'S DIGEST

SB 728, as amended, ~~Hernandez~~ *Negrete McLeod*. ~~Health care coverage. Medi-Cal: durable medical equipment reimbursement.~~

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions. Existing law requires the department to establish a list of covered services and maximum allowable reimbursement rates for durable medical equipment, as defined. Existing law requires that reimbursement for all durable medical equipment billed to the Medi-Cal program using codes with no specified maximum allowable rate be the lesser of certain amounts, including the manufacturer's suggested retail price on June 1, 2006, as specified.

This bill would base this amount instead on the manufacturer's suggested retail price on or prior to the date of service.

~~Existing law, the federal Patient Protection and Affordable Care Act, requires each state to, by January 1, 2014, establish an American Health~~

~~Benefit Exchange that makes available qualified health plans to qualified individuals and employers. Existing state law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange relative to determining eligibility for enrollment in the Exchange and arranging for coverage under qualified health plans, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014.~~

~~The federal Patient Protection and Affordable Care Act also requires that risk adjustments be made with regard to health insurers and health plans providing coverage in the individual or small group market within the state.~~

~~Existing law establishes the Office of Statewide Health Planning and Development and sets forth its powers and duties with respect to health facility construction, health policy and planning, and health professions development.~~

~~This bill would require the board of the California Health Benefit Exchange, to the extent required by federal law, to work with the Office of Statewide Health Planning and Development, the Department of Insurance, and the Department of Managed Health Care to develop a risk adjustment system for products sold in the Exchange and outside of the Exchange, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14105.48 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 14105.48. (a) The department shall establish a list of covered
- 4 services and maximum allowable reimbursement rates for durable
- 5 medical equipment as defined in Section 51160 of Title 22 of the
- 6 California Code of Regulations and the list shall be published in
- 7 provider manuals. The list shall specify utilization controls to be
- 8 applied to each type of durable medical equipment.
- 9 (b) Reimbursement for durable medical equipment, except
- 10 wheelchairs, wheelchair accessories, and speech-generating devices
- 11 and related accessories, shall be the lesser of (1) the amount billed
- 12 pursuant to Section 51008.1 of Title 22 of the California Code of
- 13 Regulations, (2) an amount that does not exceed 80 percent of the

1 lowest maximum allowance for California established by the
2 federal Medicare Program for the same or similar item or service,
3 or (3) the guaranteed acquisition cost negotiated by means of the
4 contracting process provided for pursuant to Section 14105.3 plus
5 a percentage markup to be established by the department.

6 (c) Reimbursement for wheelchairs, wheelchair accessories,
7 and speech-generating devices and related accessories shall be the
8 lesser of (1) the amount billed pursuant to Section 51008.1 of Title
9 22 of the California Code of Regulations, (2) an amount that does
10 not exceed 100 percent of the lowest maximum allowance for
11 California established by the federal Medicare Program for the
12 same or similar item or service, or (3) the guaranteed acquisition
13 cost negotiated by means of the contracting process provided for
14 pursuant to Section 14105.3 plus a percentage markup to be
15 established by the department.

16 (d) Reimbursement for all durable medical equipment billed to
17 the Medi-Cal program utilizing codes with no specified maximum
18 allowable rate shall be the lesser of (1) the amount billed pursuant
19 to Section 51008.1 of Title 22 of the California Code of
20 Regulations, (2) the guaranteed acquisition cost negotiated by
21 means of the contracting process provided for pursuant to Section
22 14105.3 plus a percentage markup to be established by the
23 department, (3) the actual acquisition cost plus a markup to be
24 established by the department, (4) the manufacturer's suggested
25 retail purchase price on ~~June 1, 2006~~ *or prior to the date of service*,
26 and documented by a printed catalog or a hard copy of an electronic
27 catalog page showing ~~the that price on that date~~, reduced by a
28 percentage discount not to exceed 20 percent, or not to exceed 15
29 percent for wheelchairs and wheelchair accessories if the provider
30 employs or contracts with a qualified rehabilitation professional,
31 as defined in paragraph (3) of subdivision (c) of Section 14105.485,
32 or (5) a price established through targeted product-specific cost
33 containment provisions developed with providers.

34 (e) Reimbursement for all durable medical equipment supplies
35 and accessories billed to the Medi-Cal program shall be the lesser
36 of (1) the amount billed pursuant to Section 51008.1 of Title 22
37 of the California Code of Regulations, or (2) the acquisition cost
38 plus a 23 percent markup.

39 (f) Commencing January 1, 2007, reimbursement for oxygen
40 delivery systems and oxygen contents shall utilize national HCPCS

1 codes, and shall be the lesser of (1) the amount billed pursuant to
2 Section 51008.1 of Title 22 of the California Code of Regulations,
3 (2) an amount that does not exceed 80 percent of the lowest
4 maximum allowance for California established by the federal
5 Medicare Program for the same or a similar item or service, or (3)
6 the guaranteed acquisition cost negotiated by means of the
7 contracting process provided for pursuant to Section 14105.3, plus
8 a percentage markup to be established by the department.

9 (g) Within six months of the effective date of the act that added
10 this subdivision, the department shall review utilization of services
11 and equipment resulting from the changes to this section made by
12 that act, and shall assess whether the changes are contributing to
13 inappropriate use of those services or equipment. If the
14 department's review finds an increase in inappropriate use of those
15 services or equipment, the Department of Finance shall notify the
16 Joint Legislative Budget Committee of the State Department of
17 Health Services' findings and recommended changes to ensure
18 program integrity.

19 (h) Any regulation in Division 3 of Title 22 of the California
20 Code of Regulations that contains provisions for reimbursement
21 rates for durable medical equipment shall be amended or repealed
22 effective for dates of service on or after the date of the act adding
23 this section.

24 (i) Notwithstanding Chapter 3.5 (commencing with Section
25 11340) of Part 1 of Division 3 of the Government Code, actions
26 under this section shall not be subject to the Administrative
27 Procedure Act or to the review and approval of the Office of
28 Administrative Law.

29 (j) The department shall consult with interested parties and
30 appropriate stakeholders in implementing this section with respect
31 to all of the following:

32 (1) Notifying the provider representatives of the proposed
33 change.

34 (2) Scheduling at least one meeting to discuss the change.

35 (3) Allowing for written input regarding the change.

36 (4) Providing advance notice on the implementation and
37 effective date of the change.

38 (k) The department may require providers of durable medical
39 equipment to appeal Medicare denials for dually eligible
40 beneficiaries as a condition of Medi-Cal payment.

1 SECTION 1.— Section 100522 is added to the Government Code,
2 to read:

3 100522.— (a) ~~To the extent required by federal law, and in~~
4 ~~conformance with Section 1343 of the federal act and any rules or~~
5 ~~regulations issued under that section, the board shall collaborate~~
6 ~~with the Office of Statewide Health Planning and Development,~~
7 ~~the Department of Insurance, and the Department of Managed~~
8 ~~Health Care to develop a risk adjustment system for products sold~~
9 ~~in the Exchange and outside of the Exchange.~~

10 (b) ~~In developing the risk adjustment system, the board shall~~
11 ~~be subject to the criteria and methods specified in Section 1343 of~~
12 ~~the federal act. The board shall also consider various data collection~~
13 ~~processes for purposes of the risk adjustment system.~~

14 (c) ~~“Risk adjustment” shall have the same meaning as described~~
15 ~~in Section 1343 of the federal act.~~

16 (d) ~~No money from the General Fund shall be used for the~~
17 ~~purpose of carrying out the provisions of this section.~~